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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of SBC Michigan's	)
Request for Limited Modification of	)
LATA Boundaries to Provide ELCS	)
Between the Fowlerville Exchange and	)
the Gregory Exchange in Michigan	)

APPLICATION OF SBC MICHIGAN

Pursuant to Section 3(25) of the Communications Act of 1934, as amended[1], the Commission's Memorandum Opinion and Order (MO&O), released July 15, 1997 in CC Docket No. 96-159[2], and the Commission's Order on Review, 17 FCC Rcd 16952 (2002)[3], SBC Michigan[4] applies for a limited modification of LATA boundaries to provide ELCS between the Fowlerville exchange and the Gregory exchange.

SBC Michigan submits the following information:

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1 47 U.S.C. § 153(25)

2 *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, CC Docket No. 96-159, released July 15, 1997.

3 *Application for Review of Petition for Modification of LATA Boundary.*

4 Michigan Bell Telephone Company d/b/a SBC Michigan, a Michigan corporation, is a wholly owned subsidiary of Ameritech Corporation, which owns the former Bell operating companies in the states of Michigan, Illinois, Wisconsin, Indiana, and Ohio. Ameritech Corporation is a wholly owned subsidiary of SBC Communications, Inc.

1. Type of Service: Non-optional Expanded Local Calling Service (ELCS), flat-rate or message-rate residence[5] and message-rate business.

2. Direction of service: Two-way.

3. Exchanges involved: Fowlerville exchange in the Lansing LATA and Gregory exchange in the Detroit LATA.

4. Name of carriers: The Fowlerville exchange of SBC Michigan and the Gregory exchange of Verizon.

5. State Commission approval: The February 5, 2001 Opinion and Order of the Michigan Public Service Commission is attached hereto as Attachment A[6].

6. Number of access lines or customers: As of the dates shown, the exchanges served the following number of access lines[7]:

Fowlerville: 4,228

Gregory: 1,397

7. Usage data: No usage data is available. SBC Michigan does not currently carry traffic across LATA boundaries.

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5 Depending on the local calling plan selected by a customer, per message charges may be applied for all local (including ELCS) calls after a maximum monthly call allowance.

6 *In the matter, on the Commission's own motion, of the implementation of amendments to the Michigan Telecommunications Act*, MPSC Case No. U-12515, *In the matter, on the Commission's own motion of the implementation of the local calling area provisions of the Michigan Telecommunications Act*, MPSC Case No. U-12528.

7 Access lines shown are those reported by the incumbent local exchange carrier as of March, 2003 for SBC Michigan and April, 2003 for Verizon, and do not include lines served by competing local exchange carriers.

8. Poll Results: No polls were conducted.

9. Community of interest statement: None.

10. Map: A map depicting the affected exchanges is attached as Attachment B.

11. Other pertinent information: ELCS was ordered by the Michigan Public Service Commission pursuant to Section 304(11) of the Michigan Telecommunications Act, MCL 484.2304(11), added by 2000 PA 295. Section 304(11) provides,

> A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and billed as a local call.

12. At page 9 of its Opinion and Order, the Michigan Public Service Commission stated,

> The Commission finds that generally, LATA boundaries should not pose a limit on the requirements of Section 304(11). However, the Commission notes that presently Ameritech Michigan is not permitted to transport calls across LATA boundaries. The Commission finds that Ameritech Michigan should use its best efforts to obtain a limited waiver of that restriction from the Federal Communications Commission to the extent a waiver is necessary for full implementation of Section 304(11) consistent with this Order.

13. Under MCL 484.2304(10), local exchange carriers are exempt from the requirements of Section 304(11) if:

> (a) The provider provides basic local exchange service or basic local exchange and toll service to less than 250,000 end-users in this state.
>
> (b) The provider offers to end-users single-party basic local exchange service, tone dialing, toll access service, including end-user common line services and dialing parity at a total price of no higher than the amount charged as of May 1, 2000.
>
> (c) The provider provides dialing parity access to operator, telecommunication relay, and emergency services to all basic local exchange end-users.

Thus, ELCS will be either one-way or two-way depending on whether the carrier (either ILEC or CLEC) serving the customer in the originating local exchange meets the exemption criteria under MCL 484.2304(10) or, even if exempt, chooses to voluntarily provide ELCS.

14. On May 29, 2001, SBC Michigan[8] filed 57 petitions[9] at the Federal Communications Commission ("Commission") to provide ELCS between various exchanges in Michigan as required by Michigan law and the Michigan Public Service Commission's order.

15. On April 29, 2003, the Commission issued a Memorandum Opinion and Order ("MO&O")[10] in NSD-L-01-151 consolidating the petitions as a single petition and granting the petition.[11] The Commission found, *inter alia*, that the petition satisfied its two-part test that the proposed modification would provide a significant public benefit and will not have a negative effect on a BOC's incentive to fulfill its section 271 obligations.

16. Following the issuance of the MO&O, SBC Michigan determined the route which is the subject of this petition is between exchanges which are "adjacent," and therefore subject to the Michigan legislation and the Order of the Michigan Commission.

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8 Then known as "Ameritech Michigan."

9 On October 8, 2001, SBC Michigan withdrew applications for two routes that were erroneously included in its applications.

10 *In the Matter of Ameritech Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS),* NSD-L-01-151.

11 On May 29, 2003, SBC Michigan advised the Commission pursuant to Rule 1.65 of the Commission's Rules, 47 C.F.R. § 1.65, that the petition for ELCS between Mackinaw City and St. Ignace was erroneously included and should have been withdrawn at the time SBC Michigan withdrew its applications for Mackinaw Island and Cheboygan, and Mackinaw Island and Mackinaw City. The Mackinaw City and St. Ignace exchanges are separated by a body of water, and thus not "adjacent" under the Michigan Commission's order or the Michigan legislation.

For the foregoing reasons, SBC Michigan respectfully requests the Wireline Competition Bureau to enter an Order approving its application for a limited modification of LATA boundaries to provide ELCS between the Fowlerville exchange and the Gregory exchange.

Respectfully submitted,

SBC MICHIGAN

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June 20, 2003

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, of the implementation of amendments to the Michigan Telecommunications Act.	Case No. U-12515
In the matter, on the Commission's own motion, of the implementation of the local calling area provisions of the amended Michigan Telecommunications Act.	Case No. U-12528

At the February 5, 2001 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On July 6, 2000, the Commission issued an order in Case No. U-12515 requesting interested parties to comment on Section 304(11) of the Michigan Telecommunications Act (the Act), MCL 484.2304(11); MSA 22.1469(304)(11), as amended by 2000 PA 295, which provides: "A call made to a local calling area adjacent to the caller's local calling area shall be considered a local call and shall be billed as a local call." The July 6 order included a list of relevant questions that might be addressed by interested parties.

By July 13, 2000, the Commission had received comments from Ameritech Michigan, AT&T Communications of Michigan, Inc. (AT&T), Attorney General Jennifer M. Granholm (Attorney General), Climax Telephone Company (Climax), Coast to Coast Telecommunications, Inc. (Coast to Coast), Jack Decker, Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems (collectively, Verizon), Long Distance of Michigan, Inc., Michigan Exchange Carriers Association (MECA), Sprint Communications Company L.P. (Sprint), MCImetro Access Transmission Services, Inc., Brooks Fiber Communications of Michigan, Inc., and MCI WorldCom Communications, Inc., (collectively, WorldCom), and Z-Tel Communications, Inc. (Z-Tel). In addition, four customers submitted comments by e-mail: Al Aubuchon, Arthur Brood, "Goble," and Gordon Malm.

After reviewing those comments, the Commission issued its July 17, 2000 order in Case No. U-12528, which stated the Commission's general agreement with four concepts: (1) Existing local calling areas should be revised. (2) The broader interpretations of Section 304(11) would likely have anticompetitive effects. (3) The Commission should commence a contested case proceeding to determine how Section 304(11) should be implemented. (4) It is not possible to immediately implement revised local calling areas regardless of the interpretations given to Section 304(11). Further, the order commenced contested case proceedings in Case No. U-12528 to address all matters necessary to the implementation of the local calling area provisions of the Act. The Commission also indicated that any provider that believed it was exempt from the provisions of Section 304(11) should file in this docket a statement of the basis for its conclusion that it is exempt. Persons submitting comments in Case No. U-12515 were permitted to participate in the new contested case without the need to file a petition to intervene. The Commission encouraged the parties to explore fully the possibilities of achieving consensus on some or all of the issues.

Finally, the Commission committed to read the record to dispense with the time necessary for a proposal for decision.

On July 28, 2000, a prehearing conference was held before Administrative Law Judge Barbara A. Stump (ALJ). At that time, the ALJ granted without objection petitions to intervene by the following parties that had not participated in Case No. U-12515: Telecommunications Association of Michigan (TAM), TCG Detroit, MediaOne Telecommunications of Michigan, Competitive Local Exchange Carriers Association of Michigan, Inc., BRE Communications, CoreComm Michigan, Inc., Peninsula Telephone Company (Peninsula), Nextlink Michigan, KMC Telecom Holdings, Inc., KMC Telecom II, Inc., KMC Telecom III, Inc. (collectively, KMC), Association of Communications Enterprises, and ICG Telecommunications Group, Inc. On September 18, 2000, an additional prehearing conference was held at which the ALJ approved petitions to intervene filed by Focal Communications Corporation of Michigan (Focal) and Allegiance Telecom of Michigan. Additionally, the Commission Staff (Staff) participated in this case.[1]

On October 3, 2000, Ameritech Michigan and Verizon filed motions to strike substantial portions of the testimony of Attorney General witness Bion C. Ostrander. On October 4, 2000, the ALJ granted those motions. On October 11, 2000, the Attorney General filed an application for leave to appeal the ALJ's ruling. Ameritech Michigan and Verizon filed responses on October 18, 2000.

[1] In addition to those parties listed, the Commission received comments from Thomas C. DeWard, Mark P. Donaldson, and Phil Lewis. The Commission will consider these comments as statements pursuant to Rule 207 of the Commission's Rules of Practice and Procedure Before the Commission, R 460.17207.

On October 4, 2000, an evidentiary hearing was conducted, during which the testimony of 15 witnesses was bound into the record without cross-examination. The record consists of 400 pages of transcript and 17 exhibits that were admitted.[2]

On November 1, 2000, the following parties filed briefs: Ameritech Michigan, Verizon, Climax, Peninsula, Coast to Coast, Focal, MECA, AT&T, Z-Tel, WorldCom, Sprint, the Attorney General, and the Staff. On November 22, 2000, the Commission received reply briefs from the following: Ameritech Michigan, Verizon, Climax, MECA, AT&T, Sprint, WorldCom, Focal, MediaOne, Coast to Coast, Z-Tel, and the Attorney General.

II.

DISCUSSION

Defining Local Calling Areas

The parties generally agree that the most important issue in this proceeding is the definition of local calling areas and determining the circumstances under which providers must treat a call as local. During the pendency of this case, the parties entered into collaborative sessions in an attempt to narrow the contested issues. As a result of those sessions several stipulations signed by many, but not all, of the parties have been entered into evidence in this case. The first of those stipulations relates to this issue, and reflects agreement by Ameritech Michigan, Verizon, Z-Tel, Climax, WorldCom, Peninsula, the Attorney General, and the Staff that:

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[2] Exhibits related to Mr. Ostrander's stricken testimony were not admitted (proposed Exhibits I-12, I-13, I-14, I-15, and I-16).

a. A customer's local calling area is the home exchange[3] to which his/her local access line is assigned as specified in the maps and boundary descriptions of the tariffs of the incumbent local exchange providers in the [s]tate of Michigan.

b. Where Section 304(11) applies, a call to an incumbent local exchange adjacent to a customer's home exchange is a local call and shall be considered a local call.

c. To the extent that calls to exchanges non-adjacent to a customer's home exchange were local calls and billed as local calls on July 16, 2000, such calls will continue to be considered local calls and billed as local calls until further order of the Commission.

d. Nothing provided in this Stipulation shall compel Ameritech Michigan to provide interLATA service prohibited by the federal Telecommunications Act of 1996.

Exhibit S-8, p. 2; (footnote added).

These parties further agree that nothing in the stipulation should be construed to prevent or limit an incumbent or competitive local exchange carrier (LEC) from proposing a scope of local calling that exceeds the provisions enumerated above. They also state that any change to the local calling area, other than those reflected in the quote above, may be proposed for Commission approval in a subsequent proceeding, in which case, the proposing carrier bears the burden of establishing that its proposal complies with the provisions of Section 304(11).

MECA disagrees with the interpretation that underlies this stipulation and argues that the subsection, if interpreted in a manner contrary to MECA's position, is void for vagueness. However, MECA asserts that if the Commission determines to go forward with redefining local calling areas, it should do so conservatively, as the stipulation permits. Further, MECA argues that for purposes of determining the size of the calling area, the originating carrier should be permitted

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[3] Ameritech Michigan and others request that "home exchange" be clarified to mean home zone in a District exchange, such as Detroit.

to specify the geographic area of its adjacent calling areas, which should consist, at a minimum, of the historic geographic boundaries of the adjacent incumbent LECs' exchanges. It argues that adopting this policy would help to prevent unintended consequences of the legislation, that might occur when a competitive LEC determines that the entire state of Michigan should be its home exchange. Without adopting the proposed limitations, argues MECA, an adjacent LEC might be put in the position of terminating calls to the entire state of Michigan as part of the basic rate for local exchange service. Such a result, MECA argues, should be avoided.

AT&T would have the Commission find that Section 304(11) applies only to traffic within the originating LEC's service territory. In other words, if the adjacent exchange to an Ameritech Michigan customer is a Verizon exchange, AT&T argues, Section 304(11) is not applicable to the call. It states that the Legislature gave no indication that it intended to redefine intercarrier boundaries. AT&T argues that a contrary result will have a negative effect on competitive LECs due to the changes in intercarrier compensation. Local call termination has generally been lower priced than toll access service, although AT&T states that may not be true for all providers.

AT&T further argues that if the Commission finds that Section 304(11) local calling includes calls into adjacent exchanges outside the service territory of the originating carrier, this might include rural LECs, which would then need to negotiate interconnection agreements with a host of competitive LECs. AT&T asserts that the probable result will be to reduce the market's attraction to potential competitive LECs.

AT&T finally argues that the broader definition does not appear consistent with the Legislature's amendment of Section 312(4), which states:

> Upon commission review and approval, all providers of toll service shall make available to their customers adjacent exchange toll calling plans. All providers of toll service shall inform their customers of the available plans. The plans shall

> remain in effect under this act until altered by order of the commission. A provider of toll service shall implement an optional discount plan for calling to exchanges within 20 miles of a customer's home exchange. The plan shall not violate the conditions delineated in the commission's order in case number U-9153, dated September 26, 1989.

MCL 484.2312(4); MSA 22.1469(312)(4). AT&T argues that to find Section 304(11) applicable to traffic terminating to all adjacent exchanges in the state would render Section 312(4) nonsensical. AT&T argues that if a provider informs its toll customers of the availability of adjacent toll service under Section 312(4), and calls to the adjacent exchange nevertheless are carried by a toll provider, the customer will be confused. It argues that Section 304(11) should apply to traffic within a LEC's serving territory and Section 312(4) should be held applicable to traffic between two different LECs' territories.

Ameritech Michigan responds that AT&T's suggestion is not unreasonable and would likely ease the burden on small competitive LECs, many of whom have chosen to offer service in the territory of either Ameritech Michigan or Verizon. Ameritech Michigan recognizes that most of those competitive LECs would be exempt from the provision, but states that competitive pressure for new LECs to meet the service breadth of the incumbent might impair their ability to compete, thus raising a barrier to entry. Ameritech Michigan states that AT&T's proposal would also limit the amount of intraLATA toll service that is converted to local calling, and would likely simplify and shorten the time required for implementation. It states that the proposed modification would also reduce some of the well-known historical problems with one-way extended area service (EAS), which, Ameritech Michigan argues, effectively encourages originating calls within the exchange for which the call is local.[4] Ultimately, Ameritech Michigan argues, the Commission

[4] Since most small incumbent LECs are exempt from Section 304(11), their local customers in areas without EAS will not have local calling to adjacent exchanges of Ameritech

must balance the potential for harm to competition with the apparent desire of some customers to expand the scope of local calling.

The Commission is persuaded that Exhibit S-8 should be adopted, with the clarification requested by Ameritech Michigan and others that the home exchange shall be understood to mean the home zone in a multiple-zone district exchange. The Commission is not persuaded that modifying the interpretation to exclude calling to exchanges outside of the service territory of the originating provider is consistent with the statutory mandate. It is the Commission's duty to ascertain and give effect to the Legislature's intent in passing this amendment. It is the Legislature's prerogative to balance the need for competition against the desire of customers to have expanded local calling areas. It appears to the Commission that viewing the scope of Section 304(11) as stipulated above is most consistent with the intent of the Legislature.

The Commission rejects the argument that this interpretation will cause hardship to competitive LECs as they may be required to negotiate interconnection agreements with many rural incumbent LECs. Although competitive LECs may find it necessary to offer expanded local calling in order to compete with incumbents, local call termination may generally be obtained through a LEC's tariff, without the need for a negotiated interconnection agreement.

The Commission further rejects the argument that Section 304(11) should require expanded local calling only within the originating LEC's service territory. Although this interpretation might be convenient for some LECs, the Commission is not persuaded that it is in keeping with the Legislature's intent. Historically, EAS has existed between different providers' local calling areas.

Michigan.

The Commission finds it doubtful that the Legislature intended to provide less expanded local calling than available through EAS.

The Commission rejects MECA's argument that the originating carrier should be permitted to define the extended local exchange. Rather, the Commission finds that the partial stipulation reasonably resolves issues concerning the minimum size of the provider's exchange by relying on those exchanges "specified in the maps and boundary descriptions of the tariffs of the incumbent local exchange providers." Exhibit S-8, p. 2.

The Commission finds that generally, LATA boundaries should not pose a limit on the requirements of Section 304(11). However, the Commission notes that presently Ameritech Michigan is not permitted to transport calls across LATA boundaries. The Commission finds that Ameritech Michigan should use its best efforts to obtain a limited waiver of that restriction from the Federal Communications Commission to the extent that a waiver is necessary for full implementation of Section 304(11) consistent with this order. Ameritech Michigan should keep the Staff apprised of these efforts on a monthly basis. Until that waiver is obtained, however, Ameritech Michigan may not be required to provide service across LATA boundaries.

Finally, the Commission finds that nothing in this order precludes the Commission's continued exploration of rate center consolidation within the service territories of individual incumbent LECs.

<u>Who Must Carry the Calls</u>

MECA argues that the Commission should find that in areas in which an interexchange carrier (IXC) now provides the service to complete a call from one calling area to a contiguous exchange, that IXC should continue to provide the service, but alter its billing of the call to a local rate. It argues that nothing in the wording of the new section requires a change in the provider responsible for delivering any particular call, only that the billing for certain calls may need to be altered. It asserts that all nonexempt providers should be required to make the billing changes necessary to implement Section 304(11), not merely basic local exchange providers.

MECA argues that the statutory definitions of "basic local exchange service" in MCL 484.2102(b); MSA 22.1469(102)(b) and "toll service" in MCL 484.2102(ee); MSA 22.1469(102)(ee) support its position that the new section does not require a change in providers for calls to adjacent exchanges that are beyond the local calling area. It argues that such calls in areas without EAS must be provided as toll service (by IXCs), although considered to be local for billing purposes. It argues that the Legislature could have expressly mandated that these calls were to be provided by basic local exchange providers, but did not. Moreover, MECA argues, the most efficient method to implement Section 304(11) is to keep the same providers, networks, and call routing, which also avoids the administrative slamming that would occur if the Commission were to change the responsible carrier without the customers' consent.

Sprint agrees with MECA that calls crossing a local calling area boundary into a different exchange may still be carried by the intraLATA toll provider that currently carries the call.

The Commission finds that the Legislature intended to impose on nonexempt LECs, not IXCs, the duty to provide customers with local calling to adjacent exchanges. The Commission finds that placement of the expanded local calling requirement in the statutory provisions for basic local exchange is a strong indication of that intent. MECA's argument is based in substantial part on the premise that "considering" a call local does not make it so, a proposition with which the Commission disagrees. The language of Section 304(11) supports the Commission's interpretation. The statute provides that a described call is to be "considered a local call and shall be billed as a local call." Use of the conjunctive suggests that the Legislature intended more than a mere billing change, as suggested by MECA. Additionally, only those providers licensed to provide basic local exchange service are permitted to carry local calls. Thus, the Commission concludes that Section 304(11) imposes a requirement on nonexempt basic local exchange providers.

New Service

The parties disagree concerning whether the Legislature intended that the expanded local calling dictated by Section 304(11) should create a new service. Ameritech Michigan, Verizon, Climax, Peninsula, WorldCom, and AT&T signed a partial stipulation concerning the applioability of Section 701, MCL 484.2701; MSA 22.1469(701), which prohibits a provider from charging a rate for telecommunications service to an end-user higher than the rate charged for that service on May 1, 2000. See Exhibit I-7. These parties argue that the only permissible interpretation of the statute is that a new service has been created by legislative fiat and that the responsibility for pricing of this new service should initially belong to the provider offering it, without the limitations that otherwise might apply because of Section 701. The Staff and the Attorney General do not agree that the Legislature intended to create a new service not subject to the rate cap in Section 701.

In support of their position, the LECs raise various arguments, none of which the Commission finds persuasive.[5] Basic local exchange service is still basic local exchange service, although the boundaries of local calling have in some instances been increased. This does not make the service

[5] The Commission notes that the primary impetus for these arguments is the constraint on raising rates found in Section 701. The Commission has been enjoined from enforcing that provision by the September 14, 2000 decision of United States District Court Judge Paul D. Borman in Michigan Bell v John Strand et al, Case No. 00-CV-73207-DT, and Verizon North et al v John Engler, Case No. 00-CV-73208-DT.

new, any more than basic local exchange service is considered new when a new subdivision is built and added to the service territory. New benefits do not necessarily render a service new within the meaning of the Act. For example, digital switch technology provides significantly enhanced service quality for local service, but installation of a digital switch does not transform basic local exchange into a new service under the Act.

However, the Commission agrees with the Staff that to the extent that customers are shifted to a new access area or rate group for basic local exchange service as a result of having a larger local calling area, current tariff rates that reflect that move shall apply. The Commission finds that this situation differs from that in Case No. U-10036, in which Ameritech Michigan sought, unsuccessfully, to increase rates for certain customers because of the growth in telephone access lines within the local calling area. In the present case, the statute increases the geographical area, as well as the quantity of access lines, available for local calling. Moreover, the change has been brought about by the Legislature's directive rather than the natural growth that might be anticipated in setting basic local exchange rates. The Commission finds that it is reasonable and lawful to employ the rate groups contained in tariffs already on file to reflect this change. Any additional alteration in rates must also comply with the Act.

Optional or Mandatory

WorldCom argues that the expanded local calling service required by Section 304(11) should be considered optional rather than mandatory for customers. Its witness, Joseph Dunbar, asserted that in order to avoid violating the anti-cramming and anti-slamming provisions of the Act, the statute must be read to give customers a choice to receive this service.

Ameritech Michigan, among others, argues that the expanded local calling service required by Section 304(11) is not optional. Ameritech Michigan argues that it is not technically feasible at this time to provide an optional expanded local calling area. Z-Tel argues that competitive LECs may be unable to support dual basic local exchange areas to permit a choice. Moreover, these parties argue, there is no violation of the Act's prohibition against slamming or cramming even if the service is mandatory. See, Exhibit S-9, Partial Stipulation Regarding Slamming/Cramming Issue, signed by Climax, Verizon, Z-Tel, Peninsula, Ameritech Michigan, the Attorney General, and the Staff.

The Commission finds that expanded local calling is mandated by Section 304(11). There is no language within that provision that supports finding that customers should be permitted an individual option as to whether they desire an expanded local calling area. Moreover, the Commission finds that a mandatory change in the provision of basic local exchange service does not impermissibly switch service providers without the customer's consent in violation of Section 505 of the Act, MCL 484.2505; MSA 22.1469(505), which provides in part: "An end user of a telecommunications provider shall not be switched to another provider without the authorization of the end user." The service providers remain the same, only the scope of service has been altered by the Act.

A related issue concerns whether the Commission's interpretation of Section 304(11) constitutes impermissible cramming in violation of Section 507 of the Act, MCL 484.2507; MSA 22.1469(507), which provides in part: "A telecommunications provider shall not include or add optional services in an end-user's telecommunication service package without the express oral or written authorization of the end-user." Because the Commission finds that the expanded local calling area is not optional, there is no violation of this section.

Billing Adjustment

This issue relates to whether a retroactive bill adjustment should be made for calls placed between the effective date of the amendment and the date that expanded local calling is actually implemented. AT&T, Climax, Verizon, Z-Tel, Brooks Fiber, WorldCom, Ameritech Michigan, Peninsula, and the Staff signed a partial stipulation in which they agreed that "no adjustments to customers' bills are required for charges collected between the effective date of 2000 PA 295 and implementation of the revised local calling provisions pursuant to the Commission's final order in this docket." The partial stipulation recites several reasons for this conclusion.

First, the parties note that the Commission has already found that it is not possible to immediately implement revised local calling areas regardless of the interpretation given to Section 304(11). Thus, they reason, it would be unreasonable to require adjustments for failure to immediately implement the mandate. Second, before it is determined what the provision means, there is no basis upon which to calculate any adjustment. Third, the parties state that charges to customers during the interim period have been and will be pursuant to lawful tariffs and should be permitted to stand. Fourth, the parties note that, in many instances, the intraLATA toll provider differs from the basic local exchange provider and that retroactive billing adjustments would be impossible to implement and might result in one provider charging for a call it did not carry, while the other provider refunds all that was charged for the service it actually provided, neither of which is appropriate.

Jack Decker argues that the Commission should order retroactive bill adjustments or direct refunds to ratepayers. He states that Section 304(11) was part of a bill that was given immediate effect. To give meaning to that immediate effect, he argues, refunds are necessary.

The Commission finds that no retroactive billing adjustments are necessary. The Legislature did not intend for the impossible to occur. The Commission previously found that implementation of this subsection could not be immediate. Given the differing providers of local and toll service, and the myriad permutations of whether a call should be considered local, the Commission concurs that it would not be reasonable to begin billing these calls as local until the necessary tasks for implementation have been completed and the expanded local calling has begun.

The Commission, however, notes that it does not agree that extended local calling required by the subsection should or could result in an increased rate like that described as possible for Ameritech Michigan. A portion of the second paragraph of this stipulation reads:

> For example, Ameritech's Call Plan 400 Extended service allows for 400 local calls and has an extended local calling area similar to the scope of local calling proposed in this case. (See, Ameritech Tariff 20R, Part 4, Section 2, 11th Revised Sheet No. 3.) This service is offered at a monthly rate of $31.55 throughout the state. On the other hand, Call Plan 400 allows for up to 400 local calls based on standard local calling areas. This service is offered at a monthly rate of $12.01 to $13.96, depending upon the customer's location. Thus, retroactive billing adjustments for a Call Plan 400 customer could result in a retroactive increase of $17 to $19 more per month per line on the local calling bill.

Exhibit S-10, ¶ 2.

To the extent that Ameritech Michigan might believe that extended local calling would effectively place all or a substantial portion of its customers on Call Plan 400 Extended service, with its significantly higher rate, the Commission expressly disagrees with that position. That plan is optional and has no relationship to the local calling mandated by Section 304(11).

Intercarrier Compensation

a. Foreign Exchange and Internet Service Provider Traffic

Ameritech raised issues concerning intercarrier compensation for foreign exchange (FX) service and calls to Internet service providers (ISPs). Several parties responded by arguing that these issues were not within the scope of this proceeding or that the Commission should merely reaffirm its prior statements. In its reply brief, Ameritech Michigan concedes that the issues should be addressed outside of this case. The Commission agrees that intercarrier compensation for FX service and calls to ISPs is not within the scope of this case. Until a contrary Commission determination is issued, the prior holdings remain in effect.

b. Exempted Carriers

MECA argues that an exemption from the provisions of Section 304(11) should also mean that the exempt company may continue to receive toll access charges for terminating calls from another provider's territory, even if the call is now considered local pursuant to the Act. The Commission disagrees. In the Commission's view, exemption from Section 304(11) merely exempts the company from providing an extended local calling area required under that section. It does not permit the company to reclassify a local call as toll when it comes from a nonexempt provider. Therefore, payment for terminating a local call should be at the exempt company's local call termination rate.

Exemptions

In its order commencing this case, the Commission directed that any provider that believes it is exempt from the requirement to comply with Section 304(11) should file a statement of the basis for its conclusion that it is exempt. Statements were filed by Z-Tel, KMC, AT&T, Borderland Communications, LLC, Bilan Communications, Inc., Focal, WorldCom, Peninsula, and TAM on behalf of 35 of its member companies. Ameritech Michigan filed a response challenging the statement filed by WorldCom.

The Commission will not rule on whether the companies that filed statements in this case are in fact exempt from the provisions of Sections 304 and 310(2), MCL 484.2310(2); MSA 22.1469(310)(2), in the present case. Any company desiring to obtain a Commission order confirming its exemption should file an application for that purpose. The Commission notes that its October 6, 2000 order in Case No. U-12582 granted exemptions for 35 of TAM's 36 member companies. In that case, each company submitted an affidavit verifying that its operations satisfy the conditions required for granting an exemption pursuant to Section 304(10). The Commission granted the exemptions for as long as each company's operations continue to comply with the conditions set forth in the Act.

Implementation Schedule

The Commission accepts the parties' general agreement that an implementation schedule is best proposed by the affected parties following the issuance of this order defining the parameters that must be met. However, the Commission is also cognizant that implementation must be prompt to give effect to the Legislative intent. Therefore, each nonexempt provider shall, within 30 days of this order, file in Case No. U-12528 proposed specific work plans and schedules for implementation that exhibit the company's commitment to expeditiously implement the required expanded local calling areas. Parties may file comments or objections to those plans within 10 days after the plans are filed.

Leave to Appeal

On October 11, 2000, the Attorney General filed an application for leave to appeal the ALJ's ruling that granted in full motions by Ameritech Michigan and Verizon to strike significant portions of Bion C. Ostrander's testimony. The Attorney General argues that the stricken testimony was well within the scope of the proceedings as established by the Commission and that the rebuttal testimony was responsive to the positions of Ameritech Michigan and Verizon witnesses. Moreover, the Attorney General argues, the ALJ's ruling has inadvertently left the record with a one-sided view of the need for increased rates. In her view, affirming the ALJ's ruling significantly compromises the interests of most Michigan telecommunication customers.

On October 18, 2000, Ameritech Michigan and Verizon filed responses to the application for leave to appeal, in which they argue that the ALJ properly struck the testimony as being outside the scope of this case and improperly relying on rate of return regulation, despite the fact that the era of such regulation has passed.

The Commission finds that the application for leave to appeal should be denied. The Commission has not entertained any rate changes in this docket and specific rate changes have not been proposed. The only alteration permitted in charges to customers is that related to a change in rate groups based on the expanded local calling required by statute. In the July 7, 2000 order in Case No. U-12515, the Commission requested comments on the expected effect of Section 304(11) on the revenues of providers of local exchange service and how that effect might change with different interpretations of the statutory language. It was not an invitation to begin a rate case or to approve altered rates. The ALJ reached the appropriate conclusion with regard to Mr. Ostrander's testimony.

Closure of Case No. U-12515

Case No. U-12515 was the Commission's initial request for comments before determining that a contested case was a more appropriate method for resolving the proposed issues. There is no purpose for continuing Case No. U-12515, and it should be closed without further Commission action.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACS, R 460.17101 et seq.

b. The provision for expanded local calling in Section 304(11) of the Act should be implemented in conformity with the findings in this order.

c. The application for leave to appeal filed by the Attorney General should be denied.

d. Case No. U-12515 should be closed.

e. Each nonexempt provider shall file in Case No. U-12528 specific work plans and schedules for implementing Section 304(11) as expeditiously as possible.

THEREFORE, IT IS ORDERED that:

A. Implementation of expanded local calling areas required by MCL 484.2304(11); MSA 22.1469(304)(11) shall conform to the findings in this order.

B. The Administrative Law Judge's ruling striking portions of Bion C. Ostrander's testimony is affirmed.

C. Case No. U-12515 is closed.

D. Within 30 days, each nonexempt provider shall file in Case No. U-12528 specific work plans with proposed schedules for implementing MCL 484.2304(11); MSA 22.1469(304)(11) as expeditiously as possible. Parties may file objections or comments on those plans and schedules within 10 days.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ Laura Chappelle
Chairman

(SEAL)

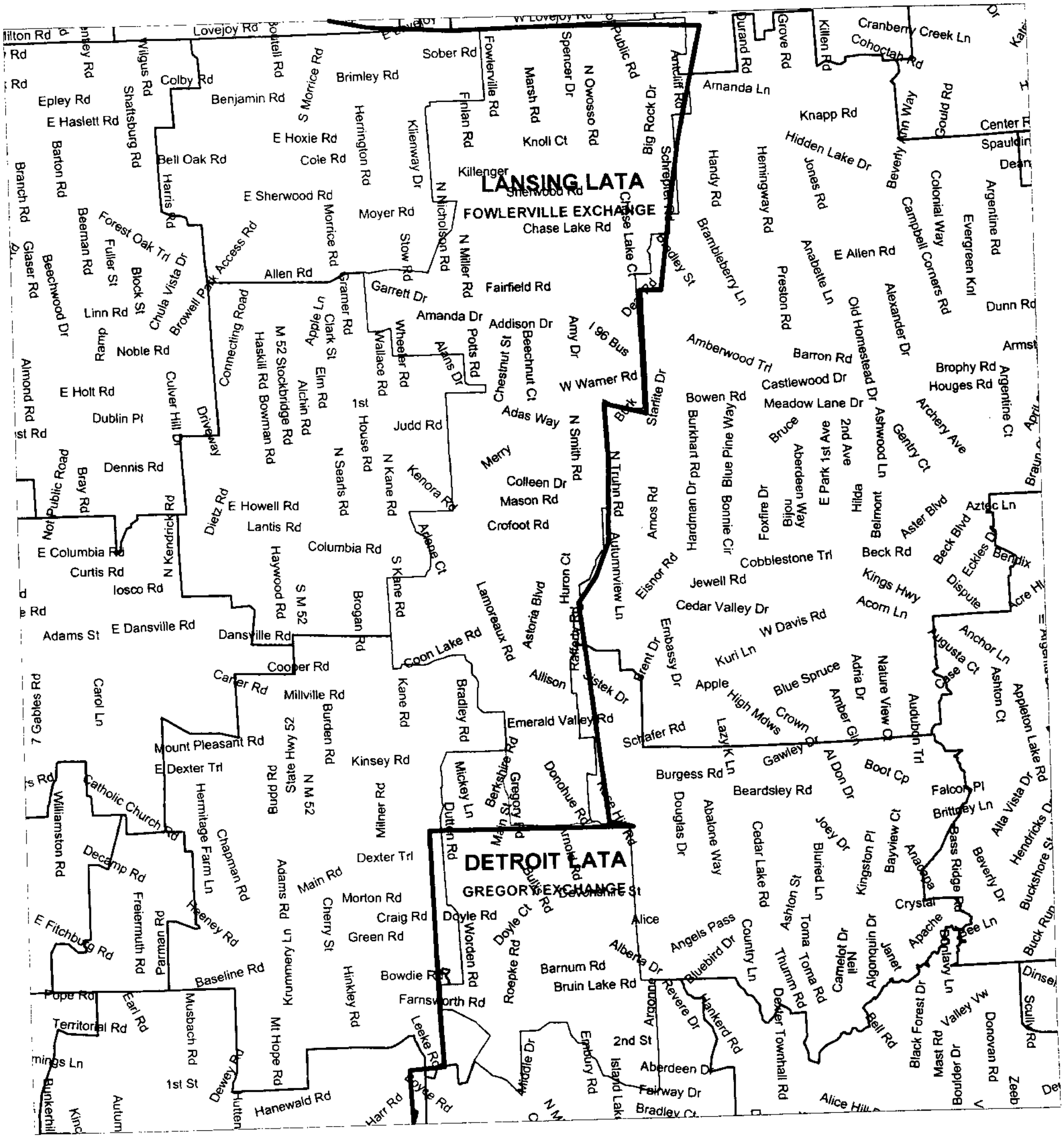
/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of February 5, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

FOWLERVILLE - GREGORY



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